

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Peter Lykins and Maria Lykins,
 Plaintiffs,

v.

Las Vegas Metropolitan Police Department
 and Dori Koren,
 Defendants.

Case No. 2:22-cv-01068-APG-BNW

REPORT AND RECOMMENDATION

Before the Court is Plaintiffs' motion to enforce settlement and motion for attorney's fees. ECF Nos. 58, 59. Defendants opposed both motions at ECF No. 66. Plaintiffs filed replies in support of their motions at ECF No. 68. For the reasons discussed below, the Court grants Plaintiffs' motion to enforce settlement and motion for attorney's fees.

I. BACKGROUND

This is a police misconduct case, in which Plaintiffs allege, among other things, that police officers unprovokedly fired pepperballs at them and falsely arrested them in retaliation for complaining about, and filming, the conduct. ECF No. 58 at 2. Plaintiffs contend that the parties reached a resolution in early August of 2023. *Id.* at 3. Defendants drafted the settlement agreement and sent it to Plaintiffs in October of 2023. *See* ECF No. 58-3 at 2. Two days later, Plaintiffs signed and sent back the settlement agreement. ECF No. 58-4 at 2.

In November and December of 2023, counsel for Plaintiffs, Ms. Rasmussen, and counsel for Defendants, Ms. Nichols, communicated frequently about the settlement checks via email. In November, Ms. Rasmussen emailed Ms. Nichols to ask about the status of the checks. ECF No. 58-5 at 4. Ms. Nichols responded that they were "waiting for Medicare clearance for [Mr. Lykins] to ensure there are no liens LVMPd [sic] has to pay out." *Id.* at 3.

In December, Ms. Rasmussen reached out to Ms. Nichols, stating: "I need the Lykins Checks ASAP. This is way longer than it should be taking." *Id.* Ms. Nichols responded that they

1 could not issue Mr. Lykins' check until Medicare confirmed that there were no liens. ECF No.
2 58-6 at 2. She also wrote that LVMPD had submitted a form, and that Mr. Lykins could submit a
3 form too, which counsel had attached to the email. *Id.* Ms. Nichols noted that she would ask for
4 Ms. Lykins' check to be processed. *Id.* Ms. Rasmussen eventually sent over a filled-out Medicare
5 form. ECF No. 58-7 at 2.

6 Ms. Lykins received her settlement check on January 18, 2024. ECF No. 66, Exhibit A.
7 To date, Mr. Lykins has not received his settlement check. Plaintiffs move the Court to enforce
8 the settlement agreement, generally arguing that Defendants are required to issue Mr. Lykins his
9 check under the agreement. ECF No. 58 at 1. Plaintiffs also seek attorney's fees for having to file
10 these motions and reply. *Id.* at 2. Defendants disagree, generally arguing that federal law prohibits
11 them from issuing Mr. Lykins his check until they receive a formal notification that there are no
12 outstanding Medicare or Medicaid liens. ECF No. 66 at 6.

13 **II. MOTION TO ENFORCE SETTLEMENT**

14 **A. Jurisdiction to Enforce the Settlement Agreement**

15 A federal court does not have inherent power to enforce settlement agreements entered
16 into by parties. *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir. 2014). But it is
17 "well established" that the court has authority to enforce a settlement agreement in litigation
18 pending before it. *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994). Here,
19 because the litigation between the parties is pending before the Court, it has the authority to
20 enforce a settlement agreement.

21 **B. Enforcement of the Settlement Agreement**

22 A settlement is a contract. *Knudsen v. Comm'r*, 793 F.3d 1030, 1035 (9th Cir. 2015)
23 (citing *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989)). Both its construction and
24 enforcement are governed by principles of state contract law. *O'Neil v. Bunge Corp.*, 365 F.3d
25 820, 822 (9th Cir. 2004) (citations omitted). Here, Nevada contract law governs the analysis
26 because the parties are litigating the case in this state.

27 Nevada law requires an offer and acceptance, meeting of the minds, and consideration to
28 constitute an enforceable contract. *May v. Anderson*, 121 Nev. 668, 672 (2005). "A meeting of the

1 minds exists when the parties have agreed upon the contract’s essential terms.” *Certified Fire*
 2 *Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378 (2012) (citation omitted). “Which terms are
 3 essential [i.e., material] depends on the agreement and its context and also on the subsequent
 4 conduct of the parties, including the dispute which arises and the remedy sought.” *May*, 121 Nev.
 5 at 672 (internal quotation marks and citation omitted). Importantly, a court cannot enforce a
 6 settlement agreement when “material terms remain uncertain.” *Id.* This is because the court “must
 7 be able to ascertain what is required of the respective parties.” *Id.*

8 Here, the parties seemingly agree that a settlement agreement was formed. In their
 9 response brief, Defendants state, “[t]he parties entered into a settlement agreement in October
 10 2023.” ECF No. 66 at 3. Indeed, Defendants drafted the agreement (offer), which Plaintiffs signed
 11 and returned (acceptance). ECF No. 58-3 at 2; ECF No. 58-4 at 2. The agreement constituted an
 12 exchange of promises, in which Defendants would pay Plaintiffs a sum of money in exchange for
 13 Plaintiffs releasing their claims against them (consideration). Still, the Court considers whether
 14 there was a meeting of the minds, *i.e.*, whether it can ascertain what is required of each party
 15 under the agreement.

16 The agreement is five pages long, excluding signatures, and contains provisions such as:

- 17 • “The Defendants shall pay Plaintiff Maria Lykins One-Hundred Fifty Thousand
 18 Dollars and NO/100 (\$150,000.00) and Plaintiff Peter Lykins One-Hundred Fifty
 19 Thousand Dollars and NO/100 (\$150,000.00)”
- 20 • “Defendants shall pay Plaintiffs within thirty (30) days of receipt of: (1)
 21 Defendants’ receipt of an IRS Form W-9, the form of which is attached as Exhibit
 22 A, properly completed by Plaintiffs and Plaintiffs’ counsel; and (2) Plaintiffs’
 23 execution of this Agreement.”
- 24 • “The Parties agree to dismiss with prejudice all of each Party’s claims in the
 25 Complaint and Counterclaim”
- 26 • “Plaintiffs does [sic] hereby fully release, acquit, and forever discharge the
 27 Defendants”
 28

- “Plaintiffs hereby expressly agree to hold harmless, indemnify, and defend Defendants . . . pursuant to the terms of the Settlement Agreement, from and against any and all losses, claims, demands, cause or causes of action or judgments of every kind and character, which may or could be brought as a result of a Medicare or other Federal, State, or local governmental lien, and/or Medicare’s status as a secondary payer”

ECF No. 58-4. Here, the Court finds that no material terms remain uncertain because the agreement explains: (1) when Plaintiffs would receive the money, (2) how much money Plaintiffs would receive, (3) how the money would be disbursed; (4) the release terms; (5) how liens would be resolved, and (6) who would resolve the liens, if any. *Id.*; see *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012) (suggesting that time for performance, price, and scope of work are material terms to a contract). The Court also notes that Defendants issued Ms. Lykins her settlement check under this exact agreement. ECF No. 66, Exhibit A. So, the Court finds that it can enforce the settlement agreement here because there was a meeting of the minds, as the parties agreed upon the material terms. See *May v. Anderson*, 121 Nev. 668, 672 (2005).

C. Interpretation of the Settlement Agreement

While the Court finds that a valid settlement agreement exists between the parties, it still considers Defendants’ arguments under principles of contract interpretation. Defendants do not provide legal theories to support their arguments or develop their arguments in any kind of detail. Nevertheless, as best the Court can tell, Defendants make two arguments. First, that the contract includes implied conditions precedent requiring (a) formal notification that there are no Medicare/Medicaid liens and (b) Mr. Lykins formally notifying Medicare of the settlement. Next, it appears that Defendants argue that it would contradict the principle that contracts be “lawful” should they be forced to issue the check without (a) receipt of such formal notification and (b) without Mr. Lykins submitting formal notice of the settlement, ECF No. 66 at 4–5. The Court disagrees with both points.

1 **i. Conditions Precedent**

2 A condition precedent “is an event, not certain to occur, which must occur, unless its non-
3 occurrence is excused, before performance under a contract becomes due.” *Rimini St., Inc. v.*
4 *Oracle Int’l Corp.*, 473 F. Supp. 3d 1158, 1208 (D. Nev. 2020) (quoting Restatement (Second) of
5 Contracts § 224 (1981)). “Conditions precedent are disfavored and will not be read into a contract
6 unless required by plain, unambiguous language.” *Id.* (quoting *Effects Assoc., Inc. v. Cohen*, 908
7 F.2d 555, 559 n.7 (9th Cir. 1990)). When a condition precedent is not explicit in the contract, the
8 Court should only infer the condition if it is “amply clear” from the contract’s language. *See Las*
9 *Vegas Star Taxi, Inc. v. St. Paul Fire & Marine Ins. Co.*, 102 Nev. 11, 12, 714 P.2d 562, 562–63
10 (1986).

11 In *The Power Company v. Henry*, the Supreme Court of Nevada considered whether the
12 terms of a settlement agreement made payment to the plaintiff contingent on a company’s
13 generation of enough proceeds to pay the settlement amount. 130 Nev. 182, 189–90, 321 P.3d
14 858, 863 (2014). In affirming the district court’s decision that “the settlement agreement must be
15 enforced according to its clear language,” the court found that the settlement agreement
16 “unequivocally” stated that the defendants were required to pay the plaintiff “regardless of the
17 sufficiency of the proceeds from the [company’s] sale.” *Id.* Similarly here, the agreement clearly
18 states that Defendants will pay Plaintiffs within 30 days of receiving the signed agreement and
19 their W-9 forms. ECF No. 58-4 at 4. Because there is no language to suggest that payment is
20 contingent on receiving a formal notification that there are no Medicare/Medicaid liens, or that
21 Mr. Lykins must notify Medicare of the settlement, the Court will not read these conditions into
22 the agreement, and it will enforce the agreement according to its clear language.

23 In *Villare v. Geico Casualty Company*, a case factually similar to this one, the United
24 States District Court for the Eastern District of Pennsylvania considered whether a settlement
25 agreement made payment “contingent upon a letter from Medicare attesting [no liens].” No.
26 CIV.A. 14-2288, 2015 WL 1312386, at *4 (E.D. Pa. Mar. 24, 2015). In finding that the
27 agreement did not contain this condition, the court reasoned:
28

1 The settlement agreement did not include any specific terms regarding Medicare liens and,
 2 in any event, the Villares have signed a release and indemnification agreement that
 3 explicitly covers Medicare liens. If Geico wished to make settlement contingent upon a
 4 letter from Medicare attesting that there are no current Medicare liens and/or that there
 will not be any future Medicare liens, it could have done so during the settlement
 negotiations, but did not.

5 *Id.* Similar to the instant case, that settlement agreement included an indemnification clause that
 6 specifically covered Medicare liens. ECF No. 58-4. It also lacked language requiring formal
 7 notification of no Medicare/Medicaid liens. *See id.* As that court noted, Defendants could have
 8 drafted the agreement to condition Mr. Lykins payment on receiving notice of no liens but did not
 9 do so. Thus, the Court finds that Mr. Lykins fulfilled his obligation under the agreement when he
 10 sent his W-9 and the signed settlement agreement to Defendants.

11 **ii. The “Lawful” Principle**

12 One foundational principle of contract law is that “a construction which makes the
 13 contract lawful will be preferred over one which would make it unlawful.” *Reno Club v. Young*
 14 *Inv. Co.*, 64 Nev. 312, 326, 182 P.2d 1011, 1017 (1947). First, Defendants state that “[p]ursuant
 15 to 42 C.F.R. § 411.24(i), LVMPD cannot issue settlement funds until they have received formal
 16 notification that no outstanding Medicare or Medicaid liens exist or that they are aware of the
 17 settlement in question.” ECF No. 66 at 6. Second, Defendants state that “[a]ttorneys representing
 18 beneficiaries, or the beneficiary themselves, must report the case and subsequent settlement
 19 directly to Medicaid or correlated agencies.” *Id.* at 5 (citing § 411.24(g)-(h)). It appears that
 20 Defendants are arguing that enforcing the settlement agreement as is, without requiring the formal
 21 notice of no liens or for Mr. Lykins to report the case, would make the contract unlawful because
 22 it would conflict with § 411.24.

23 Regarding Defendants’ first statement, the Court has carefully reviewed Defendants’ cited
 24 authority, including § 411.24(i), and does not find any language that suggests LVMPD must
 25 withhold settlement funds until it receives a notification about Medicare/Medicaid liens.
 26 Section 411.24(i) states, in part: “If Medicare is not reimbursed as required by paragraph (h) of
 27 this section, the primary payer must reimburse Medicare even though it has already reimbursed
 28

1 the beneficiary or other party.”¹ The Court understands this to mean that if Mr. Lykins has a
2 Medicare lien, he is required to reimburse Medicare for the lien amount, and if he does not,
3 LVMPD will be required to do so, even if they have already paid Mr. Lykins his settlement
4 check.

5 While the Court understands that this regulation exposes Defendants to liability if Mr.
6 Lykins does not reimburse Medicare (assuming a lien exists), it does not prohibit Defendants
7 from issuing Mr. Lykins his settlement check. Moreover, the settlement agreement already
8 addresses this issue. ECF No. 58-4 at 5. According to its terms, Plaintiffs will indemnify
9 Defendants against any Medicare liens. *Id.* The settlement agreement is still lawful without this
10 condition.

11 Regarding Defendants’ second statement, the Court has also carefully reviewed
12 Defendants’ cited authority, including 42 C.F.R. § 411.24(g)-(h) and the link to Centers for
13 Medicare & Medicaid Services (“CMS”) that Defendants provided. *See* ECF No. 66 at 5. Like
14 § 411.24(i), the language in § 411.24(g)-(h) discusses Medicare’s right to recover payments. That
15 provision does not say anything about the requirement of the beneficiary to report the case to
16 Medicare. The CMS link does state that “Medicare beneficiaries, through their attorney or
17 otherwise, must notify Medicare when a claim is made against an alleged tortfeasor with liability
18 insurance. This obligation is fulfilled by reporting the case in the Medicare Secondary Payor
19 Recovery Portal (MSPRP) or by contacting the Benefits Coordination & Recovery Center
20 (BCRC).”² The site goes on to say that, when reporting a case in the MSPRP or to the BCRC, the
21 beneficiary must provide his Medicare number. *Id.* But it is not clear how the language on that
22 site makes it illegal for LVMPD’s to issue the check until such notification is made.

23 Here, the settlement agreement is lawful as is. The absence of a clause that requires Mr.
24 Lykins to report his claim to Medicare does not render the contract unlawful. As an aside, it

25 ¹ Section 411.24(h) states: “If the beneficiary or other party receives a primary payment, the
26 beneficiary or other party must reimburse Medicare within 60 days.”

27 ² *Coordination of Benefits and Recovery – Attorney Services – Reporting a Case*, CTRS. FOR
28 MEDICARE & MEDICAID SERVS., <https://www.cms.gov/medicare/coordination-benefits-recovery/attorney-services/reporting-case> (last visited May 17, 2024).

1 appears that even if the Court were to order Mr. Lykins to notify Medicare of the settlement, Mr.
 2 Lykins would not be able to comply because he does not have a Medicare number, which is
 3 required according to the CMS website. *See* ECF No. 58 at 9. Moreover, counsel for Plaintiffs
 4 filled out, to the extent possible, the CMS form that Defendants requested. *See* ECF No. 58-7.

5 In sum, the Court will enforce the settlement agreement as it is written. Under § 1 of the
 6 agreement, the Defendants must pay Mr. Lykins \$150,000 within 30 days of receipt of his W-9
 7 and execution of the agreement. ECF No. 58-4 at 4. On October 17, 2023, Mr. Lykins, through
 8 his counsel, sent Defendants his W-9 form and the signed agreement. *Id.* at 2. It has been (much)
 9 more than 30 days, and Mr. Lykins has still not received his settlement check. Accordingly, the
 10 Court grants Plaintiffs' motion to enforce the agreement and orders Defendants to issue Mr.
 11 Lykins his check within 10 days of the filing of this order.

12 **III. MOTION FOR ATTORNEY'S FEES AND COSTS**

13 Plaintiffs move the Court, under its inherent authority, to award them reasonable
 14 attorney's fees incurred from seeking to enforce the settlement agreement. ECF No. 58 at 16.
 15 Specifically, Plaintiffs argue that Defendants should be sanctioned for acting in bad faith. *Id.*
 16 Defendants oppose the motion, arguing that they have not acted in bad faith. ECF No. 66 at 7.
 17 The Court need not decide the merits of these arguments because it awards the fees under the
 18 parties' settlement agreement.

19 "A court may award attorneys' fees to the prevailing party if [] a statute, rule, or contract
 20 authorizes an award" *CBC Fin., Inc. v. Am. Safety Indem. Co.*, No. CV-S-04-0547 DAE-
 21 GWF, 2007 WL 9753001, at *2 (D. Nev. May 2, 2007) (citing *McCarran Intern. Airport v.*
 22 *Sisolak*, 137 P.3d 1110, 1129 (Nev. 2006)). Section 7(d) of the settlement agreement states:

23 Unless otherwise specifically provided for herein, each party hereto shall bear its own
 24 attorney fees incurred in the negotiation and preparation of this Agreement and any related
 25 documents. However, in the event that any action or proceeding is instituted to interpret or
 26 enforce the terms and provisions of this Agreement, the prevailing party shall be entitled
 27 to its costs and attorney fees, in addition to any other relief it may obtain or be entitled to.

28 Here, Plaintiffs moved to enforce the terms and provisions of the agreement by filing their motion
 to enforce settlement. Because the Court grants their motion, they are the prevailing party and
 entitled to costs and attorney's fees under the agreement.

1 **IV. CONCLUSION**

2 IT IS THEREFORE ORDERED that Plaintiffs' motion to enforce settlement (ECF No. 58)
3 and motion for attorney's fees (ECF No. 59) are GRANTED.

4 IT IS FURTHER ORDERED that Defendants must issue Mr. Lykins his settlement check
5 within 10 days of the filing of this order.

6 IT IS FURTHER ORDERED that the parties are to meet and confer within 10 days regarding
7 reasonable attorney fees. To the extent no agreement is reached, Plaintiffs are to file a
8 memorandum of costs listing the reasonable attorney's fees they have incurred in seeking
9 enforcement of the settlement agreement.

10 **NOTICE**

11 This report and recommendation is submitted to the United States district judge assigned
12 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
13 may file a written objection supported by points and authorities within fourteen days of being
14 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
15 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,
16 1157 (9th Cir. 1991).

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18 DATED: May 20, 2024

19 
20 BREND A WEKSLER
21 UNITED STATES MAGISTRATE JUDGE
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